

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 16-11700-smb

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5 In the Matter of:

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7 GAWKER MEDIA, LLC,

8 Debtor.

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11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

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15 November 3, 2016

16 10:54 AM

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23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

Hearing re: Debtors Motion For the Entry of an Order
Approving (I) Adequacy of the Disclosure. Statement, (II)
the Solicitation and Notice Procedures with Respect to
Confirmation of the Joint Chapter 11 Plan of Liquidation for
Gawker Media Group, Inc., Gawker Media LLC, and Gawker
Hungary Kft., (III) the Form of Ballots and Notices in
Connection Therewith, and (IV) the Scheduling of Certain
Dates with Respect Thereto (related document(s)308).

Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 MR. GALARDI: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. GALARDI: For the record, Gregg Galardi, on
5 behalf of Gawker Media LLC and the related Debtors. Your
6 Honor, we filed an agenda. Why don't I go to the second
7 matter first because it is the matter on a 2004 exam, and
8 the parties have consulted and we'd requested an
9 adjournment. Your Honor had originally granted it for
10 November, I think, 14th or 15th, and then we contacted and
11 our agreement is to put it off even longer than that. It's
12 noted in the status.

13 THE COURT: I don't have that on my calendar
14 because it was probably adjourned, so just deal with
15 chambers if we agreed to a different date.

16 MR. GALARDI: That's right, and it's on for
17 December 29th. So the only matter that is really -- is on
18 today for the agenda is the Debtor's motion for approval of
19 a disclosure statement and plan.

20 Your Honor, we had originally filed a plan back in
21 September. We filed an amended plan and disclosure
22 statement yesterday. We did convey it to Court, there were
23 a few extra changes that happened overnight, but I emphasize
24 they are very few.

25 What I would propose to do, Your Honor, is first

1 note for the record that there are Certificates of Service
2 on file with respect to the service of the disclosure
3 statement. Those are at Dockets #326, 346, 353, and 382.
4 What I would then turn to, Your Honor, is maybe just giving
5 Your Honor a little bit of an overview of the plan and a
6 summary of the plan, and then take up the standard by which
7 we think that we have satisfied the requirements of adequate
8 information.

9 But I think -- and Your Honor, there are four --
10 there were two objections. Well, there are two reservations
11 of rights that were actually filed. One is by the
12 creditor's committee, and one was from certain former
13 employees and independent contractors. We believe that
14 those reservations of rights have been resolved by our
15 disclosure statement in the plan. I would note two other
16 parties that we've been in contact. One obviously is the
17 U.S. Trustee, who's reserved all rights; there are releases
18 in these plans, and they've reserved all rights with respect
19 to all matters for confirmation. And I've been in contact
20 with the U.S. Trustee's Office.

21 The second party that contacted us is the party
22 that is the second-lien make-whole owner, Columbus Nova.
23 I've referred to them before. We are still working through
24 whether the plan treatment that we have provided to them is
25 resolved. There are still some issues, but we believe we

1 will resolve that during the course of the next six weeks
2 and prior to confirmation.

3 So we don't believe that there are currently any
4 objections to the disclosure statement as it has been
5 amended. And, indeed, what I believe we've done is made
6 significant progress, as Your Honor probably can see from
7 the last time we spoke, resolving certain of the claims that
8 we've talked about in these cases. And what I think is
9 maybe most useful to Your Honor is to go through what I
10 think are the most significant changes in the plan and
11 disclosure statement if Your Honor has questions. And what
12 I see for the next six weeks, should Your Honor approve it,
13 is having adequate information and answer any questions from
14 Your Honor.

15 THE COURT: Go ahead.

16 MR. GALARDI: First, Your Honor, I think that the
17 key issue for this plan is now what we call the plan
18 settlement section, which is in plan -- in Section 7 of the
19 disclosure statement. As Your Honor may recall, when we
20 first filed the disclosure statement and as Your Honor has
21 heard on numerous occasions when I've been before Your Honor
22 on these matters, one of the major issues in the case was
23 after the sale of substantially all of the assets, how would
24 those assets be allocated among the various three estates.

25 As Your Honor will recall, the only estates whose

1 assets were sold were the assets of Gawker Media and what we
2 now refer to as Gawker Hungary because we had to change the
3 name. The holding company, which is GMGI, is totally
4 dependent on distributions out of one of those two estates.

5 Your Honor, in the first disclosure statement that
6 we filed, we noted that it was at least the Debtor's
7 position that the assets should be allocated two-thirds to
8 Gawker Hungary and one-third to Gawker Media, based on
9 historical transfer pricing. The committee obviously had
10 objected to that and had raised concerns about that.

11 As I announced, I believe, at the last hearing,
12 which was a status conference, we had productive
13 conversations with the committee about potentially resolving
14 that, but not resolving certain of the creditor claims. We
15 continued to proceed with those discussions, but at the same
16 time, Your Honor, it made sense to the parties -- and I
17 thank the parties for their efforts -- to not only address
18 the allocation issues, but a lot of the other issues. And
19 as set forth in the disclosure statement, the committee had
20 filed -- or not filed -- had sent us a demand, a standing
21 demand, and there were issues with respect to the creditor
22 claims, so we entered into negotiations. I think it was
23 probably three days in my office with Mr. Bollea and his
24 counsel, and in addition, conversations with Terrill and
25 also Mr. Ayyadurai, who happen to be the three committee

1 members, but they're also three of the most active
2 plaintiffs who have actually prosecuted their claims, and I
3 think that's significant.

4 Your Honor, as a result and as set forth in the
5 plan settlement, again, subject to Your Honor's approval
6 under a 9019 standard going to confirmation, what we have
7 laid out is a series of those settlements. And I'll call --
8 this is settlement Category 1, which I believe settles
9 allocation -- that two-thirds/one-third I mentioned --
10 intercompany debts -- how do those debts and claims between
11 the two companies get treated -- and certain causes of
12 action, and those are causes are action that could either
13 mush all of the estates together, a technical term, into a
14 substantive consolidation estate or alter ego veil piercing-
15 type plans. And in addition, which is absolutely critical
16 to the creditors, it is their particular claims, and then
17 the other creditors out there claims.

18 So that is all set forth in Section 7 of the plan.
19 That's one major settlement.

20 THE COURT: How did you settle the intercompany
21 claims? I understand the creditor claims and the
22 allocations of 60/40 split at this point.

23 MR. GALARDI: Correct. Well, again, when you ask
24 me about intercompany claims, I'm going to break them into
25 two different types of intercompany claims. Let's take what

1 I'll call not really intercompany debt claims, but the sort
2 of breaches of fiduciary duty alter ego substantive
3 consolidation-type claims. Those claims are resolved
4 pursuant to the settlement in the following way: One -- and,
5 again, we don't believe that there are valid such claims,
6 but I think Your Honor is asking me what consideration and
7 where can I look in the plan to see what you basically
8 valued it and what am I anticipating for a 9019 motion, so
9 I'll answer it that way.

10 One is there was an intercompany claim between --
11 well, there was two claims, let me put it this way. There
12 was \$23 million allegedly on the books of Gawker Hungary
13 that Gawker Media would have had to pay. Let's call that
14 the big intercompany claim from Gawker Media over to Gawker
15 Hungary. On the other side of the balance sheet, there was
16 about a \$3 million intercompany claim that Gawker Hungary
17 owed to Gawker Media, okay. The way in which we resolved
18 this, and it also was tax purposes and other purposes, the
19 way that that has been resolved in this plan is as follows:
20 First, based upon the reallocation, there's been essentially
21 -- I won't call it a write down because it's not a
22 forgiveness of debt -- there's been a restatement of what
23 that debt was -- and I think we describe it here. It comes
24 from -- one of the intercompany licensing revenues, I think
25 if my recollection's correct and Mr. Holden is here, roughly

1 came down from 10 to 7. So there was a straight you don't
2 have that debt.

3 Second, that left about \$19 to \$20 million. Under
4 the plan, you will notice that the intercompany claims,
5 subject to Your Honor's approval, from Gawker Media to pay
6 Gawker Hungary gets paid \$16 million. And then the balance
7 of that claim, which is roughly \$3/\$4 million is
8 subordinated until after all of the unsecured creditors are
9 paid in full. So essentially, there's a reduction and not a
10 full payment of that intercompany claim.

11 But that's not the end of the story because there
12 was other intercompany claims. So, again, I've lived it so
13 I'm going to try to say it simply here. The Gawker Hungary
14 really doesn't have any unsecured creditors left as a result
15 of the sale. So if you think about the flow of money, the
16 money goes from the intercompany and then would be a
17 distribution. If Your Honor approves that \$16 million, it
18 would be a distribution up to GMGI. And under this plan,
19 GMGI has offered, as part of the settlement, to give a \$2
20 million guaranty to unsecured creditors. And there's a long
21 priority scheme, which I'll talk about, with unsecured
22 creditors of Gawker Media, so there's a benefit to the
23 Gawker Media creditors.

24 In addition to think about GMGI, GMGI has
25 essentially said, we're not going to look at this of two-

1 thirds/one-third. They've essentially settled the issue by
2 saying, we'll let it be a 60/40 split. And in that sense,
3 GMGI -- or, ultimately, the equity -- is settling for less
4 than they might otherwise get so that Gawker Media, we
5 believe, will be able to pay all of the unsecured creditors
6 in full with what we've left behind.

7 So part of the settlement and part of the
8 discussions -- and, again, there were more equity members
9 than Mr. Denton, and Mr. Denton was involved, but there were
10 other preferred equity members. They obviously want their
11 money now as fast as possible. Gawker Media obviously wants
12 money available to the unsecured creditors, so there was a
13 tension of how to essentially split it up so that they get
14 something, they get reasonable assurances, and creditors --
15 and I think Mr. Zipes asked the same question -- so
16 creditors at Gawker Media will be able to come in at
17 confirmation and say, that reserve is not enough, that
18 creditor trust is not enough, what you've pointed out that
19 intercompany claim should not go as much, that guaranty is
20 not as much.

21 We anticipate having all of those potential issues
22 at confirmation, but that's the structure of the
23 intercompany debts and settlements. There's a forgiveness
24 of a \$200,000 note, I believe, between GMGI and Gawker
25 Media. There's not going to be prosecutions of claims. And

1 I think one of the biggest points of all of this -- and I
2 think the committee has agreed with us -- litigating the
3 morass of those issues saves the estate probably \$10 million
4 minimum, and the allocation and the claims results in a tax
5 savings of roughly another \$9 to \$10 million if we
6 consummate this transaction by year end.

7 So in some sense, by settling, GMGI may get more,
8 but it's also the creditors get more available. And in a
9 sense, that was what started the conversations when we then
10 met with Mr. Bollea and the other claimants because
11 obviously if we had stuck with the two-thirds/one-third,
12 there wouldn't have been enough to pay the unsecured
13 creditors at Gawker Media. So both the committee and the
14 individuals wanted to make sure that there was enough money.
15 And we've done, and Your Honor probably has seen, a series
16 of objections with respect to a number of the other claims
17 that are in the hundreds of millions, which we dispute.

18 So did I answer your question about --?

19 THE COURT: Yes.

20 MR. GALARDI: Okay. Your Honor, and all of that
21 is set out in the plan settlement. There was a flow of
22 funds, it's also in the liquidation. So what we believe is
23 if this plan is approved, then we put on evidence on 9019.
24 We'll put on evidence about the sale proceeds; we'll put on
25 evidence about the expenses; we'll put on evidence about the

1 intercompany claims; we'll put on evidence about our
2 investigation of the breaches of fiduciary duty to
3 substantive consolidation; and also, we're going to put on
4 evidence with respect to the creditor's views.

5 THE COURT: Before we leave this, in the earlier
6 version, you had had a section, second lien make-whole
7 settlement. Are you telling me that's not settled?

8 MR. GALARDI: Your Honor, in that plan, again, we
9 noted that that was what we believed the settlement is.
10 They have not accepted that treatment. We are still having
11 those negotiations. We believe we will settle it at that
12 amount or some very close to that.

13 THE COURT: So explain to me what the claim is and
14 what the proposed treatment is.

15 MR. GALARDI: Sure. Your Honor, the claim is, as
16 you'll recall, we paid off the -- I call it the Columbus
17 note of debt. Let's call it the second lien debt. The
18 second lien debt was paid in full with interest, including
19 default interest, at the time of the closing. In addition
20 to being paid in full with default interest, there was also
21 a provision in the agreement that provides for a 25 percent,
22 I think it is, make-whole, or \$3.75 million. The primary
23 obligor on that obligation is GMGI, the parent company, but
24 it is guaranteed by both of the subsidiaries.

25 Your Honor is familiar enough with make-whole

1 litigation, that there are a number of arguments that you
2 could make, and obviously a number of arguments that they
3 say that are not valid. But the one that we have focused
4 most on is that this is a penalty. You got your full
5 payment, you got your default interest, and now you're going
6 to kick in a 25 percent extra penalty.

7 The circumstances of that loan, Your Honor, were
8 that it was a borrowing in the beginning of this year. And
9 it was to help the company, one, through the litigation and,
10 two, there was -- Columbus Nova had a representative put on
11 the board and it was for purchase of certain of the equity.
12 The proposed treatment under the plan is the following. So,
13 again, looking at it -- and, again, Mr. Simon is here today
14 on behalf of Columbus Nova -- but looking at it, the Debtors
15 said that this is a penalty, we don't want to spend much
16 money litigating it, you'll spend \$3.75 million very
17 quickly, let's settle it this way.

18 The settlement provides that the first \$1.5
19 million of that penalty is paid on a non-subordinated basis,
20 500 from each of the three Debtor entities. The second
21 part, the balance of that, is that, at least with respect to
22 Gawker Media -- and I think that's the critical one --
23 Gawker Media would be obligated to pay the 750. So after,
24 after all unsecured claims at Gawker Media are paid in full.

25 So a moment ago when I referred to the waterfall

1 scheme for unsecured creditors, in our plan, that's the
2 third level of the waterfall scheme. So why don't I turn to
3 that for a second and I'll come back. The first level is
4 the creditor reserve; I think it's at 3.75 now. The second
5 level is there are retained assets, one of which is the
6 gawker.com asset that may be sold, so you top up on that.
7 If, and only if, those two amounts are not sufficient to pay
8 the unsecured claims, they can look to the 750. And if, and
9 only if, that doesn't happen, you could look to the \$2
10 million guaranty that I talked about before. Again, all
11 assuming Your Honor approves the plan, but that's the
12 structure.

13 THE COURT: How'd you come up with 750? I thought
14 you said \$1.5 million was being paid by the three entities.

15 MR. GALARDI: We did 500 -- well, we did 1. --
16 what we split, we split the claim into three parts, each
17 1.25. I got to do math at the stand here today, at the
18 podium, but 1.25 each.

19 THE COURT: Oh, 1.25 each.

20 MR. GALARDI: Well, the total claim against each
21 entity was 1.25 each. The first 500 of each of those claims
22 was paid from the entities, and that left 750 at each of the
23 entities. But because the primary obligor was at GMGI and
24 because it was a pass-through, we sort of moved that all up
25 to GMGI that -- those two 750, but there's still 750 over at

1 Gawker Media.

2 THE COURT: Okay.

3 MR. GALARDI: And so, as -- I won't say as a
4 penalty, but as a compromise, they've subordinated their
5 payment at Gawker Media, the 750, and they've also
6 subordinated the payment at GMGI. And so, that's how we've
7 proposed to resolve it. The discussions have been about the
8 amount and the terms on that and the risk factors. We've
9 had those discussions.

10 And, again, since we were in other settlement
11 conversations and wanted to see how the case went out, they
12 sort of stayed on where they were the last time I was here,
13 until such time as we could announce these other settlements
14 and get them comfortable with the cash flows. But we do --
15 we're very confident that we will have that settlement, Your
16 Honor, and not a litigation over whether that was a penalty.

17 The other aspect of the settlement, Your Honor,
18 which went to the allocation, but resolve certain allocation
19 issues -- and I think is very important as has been picked
20 up in the press -- we have agreed that Mr. Bollea's claim --
21 and, Your Honor, he had \$115 million claim and he also had a
22 punitive claim. But his claims will be settled for \$31
23 million, plus a percentage of recovery from what we call the
24 contingent account; that's where the retained causes of
25 action are. Mr. Ayyadurai has agreed to a settlement in the

1 amount of \$750,000, and will not have a claim to the
2 contingent proceeds account. And Miss Terrill will have a
3 settlement of \$500,000 and no claim to the creditor -- to
4 that residual. And that residual was split again in
5 negotiations with Mr. Bollea -- 45 percent to the creditors,
6 55 percent to GMGI, which could be to the benefit of the
7 equity.

8 Those were the allocation settlements. I think
9 it's also important to understand about the settlements.
10 And, again, final documentation on Mr. Bollea is due on the
11 plan supplement date or earlier. You spend enough time on a
12 term sheet, you're pretty much to the settlement agreement.
13 It's just been my busy on doing the disclosure statement.

14 Mr. Bollea agrees to waive -- and this'll get to
15 the releases -- Mr. Bollea is taking this payment in
16 satisfaction of certain claims against Mr. Denton and A.J.
17 Daulerio, who, as Your Honor knows from the previous
18 proceedings, were subject to various litigations, as well
19 as, you'll see in the plan, employees and independent
20 contractors as a defined term. Mr. Bollea filed claims up
21 at the parent; he filed claims in Mr. Denton's case; he
22 filed claims here.

23 What's still left out is a punitive damage claim
24 against those individuals, and they will deal with that in,
25 I believe, Mr. Denton's case, but we're hopeful that that

1 also gets resolved. And with respect to Mr. Ayyadurai and
2 with respect to Miss Terrill, those claims also waive claims
3 against the other parties to the extent that they're covered
4 by indemnity. So the Debtor has essentially gotten out of
5 indemnity-type claims, as well, and third-party claims,
6 which helps clear what has been referred to as the indemnity
7 dam at Gawker Media or GMGI.

8 So that's -- so I think I've covered the plan
9 settlements, Your Honor, unless you have a question about
10 those.

11 THE COURT: No.

12 MR. GALARDI: Okay. Now, obviously -- well, maybe
13 not obvious to everyone -- the plan settlements drive, as
14 well as tax concerns that I had mentioned at one point in
15 these hearings, drive what I'll call the summary chart that
16 is in the disclosure statement, which lays out creditors'
17 recoveries. Importantly, we're not seeking substantive
18 consolidation of these plans. And generally, you'll see
19 unsecured creditors have ranges of recoveries, but I want to
20 focus on that for a few seconds.

21 There are claims -- and Your Honor is familiar
22 with bankruptcy. You'll have, for example, claims by Mr.
23 Huang, who you remember he appeared earlier on a case. I
24 can't remember, he was 100 million, but he's probably filed
25 three claims of 100 million at Gawker Media; just updating,

1 he's also probably filed a claim in the Hungary case and in
2 the case of GMGI. Whether or not he has claims against the
3 other entities, that's something that's the subject of a
4 claims objection. Mr. Bollea had filed claims in a lot of
5 those entities.

6 So we believe those range of claims is way high;
7 and, indeed, other than the claims that we are settling and
8 some standard trade claims, we actually believe there are no
9 other claims left in the case, but that is something Your
10 Honor will decide on the claims objections. Many of these
11 are not traditional or personal injuries -- I don't know if
12 you've read the objections, but we don't -- we believe Your
13 Honor can, in fact, resolve those. So you'll see a wide
14 range, but our view is that the unsecured creditors here
15 will, in fact, receive 100 percent distribution, which will
16 help, obviously, with the argument of the intercompany and
17 everything else. We have filed objections and will be
18 proceeding with those.

19 Again, another benefit, though not in my case, as
20 I mentioned, the GMGI estate, we're trying to deal with all
21 of the indemnity claims. It's wholly dependent, but as Your
22 Honor knows, Mr. Denton is a large preferred shareholder, so
23 how that estate does will help and affect his estate. His
24 counsel is here. I think this is progress in both cases,
25 especially since we've gotten rid of at least claims for

1 which indemnity would be asserted by Mr. Denton or Bollea
2 that we can resolve those, as well as Mr. Daulerio.

3 As I mentioned, there's the Gawker Media unsecured
4 creditors waterfall. I've walked through that for you. And
5 Gawker Hungary, as I mentioned to you, to them and to the
6 creditors of Gawker Hungary, the allocation issue, other
7 than for tax reasons, was not a major issue because all of
8 those claims had been paid in full. Now there may be things
9 that come out of the woodwork, and as Your Honor may recall
10 from Univision sale, we had an obligation to dissolve, but
11 also to leave a \$2 million credit support. We believe this
12 will resolve all of those issues.

13 So turning now to what I believe is the other
14 major change, or at least one major change or what I want to
15 highlight for Your Honor as a two comm controversial issue -
16 - not seeking approval, obviously, but highlighted. You
17 will see, Your Honor, there are releases in the plan. There
18 is an injunction; I'm not sure that's controversial. There
19 is exculpation, which I don't believe is --

20 THE COURT: Well, about your injunction.

21 MR. GALARDI: Okay.

22 THE COURT: The injunction runs in favor of the
23 Debtors, and then it says and other parties and interests.
24 I don't know who that is.

25 MR. GALARDI: Your Honor, I think the answer is

1 going to be -- I think we can clarify that. What the main
2 focus of that injunction is is the Debtors and the employees
3 and the independent contractors for exactly the publication
4 issues. So we certainly clarify that. I understand the
5 ambiguity of just other parties and interests. It can't be
6 everybody in the case.

7 THE COURT: On the exculpation, you're
8 exculpating parties from the enforcement that the terms of
9 the plan and the contracts, instruments, et cetera. In
10 other words, it's -- and it's exculpated, and it's
11 exculpation from future conduct. How do I do that? So no
12 matter what they do --

13 MR. GALARDI: And I think it's, again, bad
14 drafting that we can correct. You think it's overreaching;
15 I'll say it's bad drafting on the point. So I think what
16 we'll do is we'll modify it to make it clear that it's
17 exculpated for anything taken up until the entry of the
18 Confirmation Order, which is, I think, the standard way to
19 do that.

20 THE COURT: Okay. And then on your third-party
21 releases.

22 MR. GALARDI: Yes. May I make my pitch?

23 THE COURT: The releases are not limited to the
24 claims relating to the Debtor.

25 MR. GALARDI: Correct.

1 THE COURT: So that if you have a bank creditor,
2 let's say who has a mortgage against one of these released
3 employees, this third-party release would release that
4 mortgage claim.

5 MR. GALARDI: Well, that's not the intention, Your
6 Honor.

7 THE COURT: I'm sure it's not.

8 MR. GALARDI: So --

9 THE COURT: That's what it does.

10 MR. GALARDI: Okay, that will be fixed. What is
11 intended by that --

12 THE COURT: Unless it goes to the beginning of
13 time, it has nothing to do with what occurred during the
14 case or anything like that.

15 MR. GALARDI: Yes, Your Honor, and there's also
16 going to be a temporal element to it. So I think what we
17 can do is clearly modify that because -- let me explain to
18 Your Honor what we have in mind. And I'm glad we're having
19 a dialogue before now and not on the confirmation hearing.

20 As Your Honor is well aware, we are subject to
21 litigation for publishing articles. There is generally, as
22 I've learned through this case, a one-year statute of
23 limitations from which people can sue you. We obviously
24 have the benefit of a bar date, an administrative bar date.
25 Mr. Denton will eventually have the benefit of his bar date.

1 Writers and the independent contractors that wrote the
2 articles, the people like Mr. Daulerio, and I don't want to
3 speak to the benefit, they will not have that benefit; but
4 yet, they would have indemnification claims, and they're
5 represented by counsel.

6 THE COURT: What happens to those claims if
7 they're not filed or liquidated by the time of confirmation?

8 MR. GALARDI: Exactly why we have put in the plan
9 a third-party release. We are saying to those people who
10 have gotten a benefit under our bankruptcy case that they
11 are being asked to waive the claims against those
12 individuals. So they would be barred from bringing any new
13 claims against those individuals, i.e., the writers, the
14 employees, and the independent contractors. We believe they
15 are getting consideration for that because they are going to
16 be able to get distributions.

17 THE COURT: That's fine, as long as the claims
18 arise from stuff they did for the Debtor.

19 MR. GALARDI: Exactly.

20 THE COURT: This is much broader than that. It's
21 a release of any claims that may exist that may have nothing
22 to do with the Debtor.

23 MR. GALARDI: Correct, Your Honor. And, again,
24 bad drafting, last minute drafting. That has to be clear,
25 and we will make it clear in the version that goes out.

1 THE COURT: Okay, so we admit it's only drafted.
2 What else?

3 MR. GALARDI: Your Honor, I would say that there
4 are two other -- and at this point, what I'd like to do is
5 just hand up to Your Honor the very light changes that we
6 did last night. And these, I believe, are really in the
7 spirit of (indiscernible). May I approach?

8 THE COURT: Sure. I have one other question about
9 the plan that relates to these releases. You have a
10 definition in the plan releasing party. I don't think it
11 appears anywhere in the plan itself, other than in the
12 definitions.

13 MR. GALARDI: We'll check that, Your Honor.

14 THE COURT: Why don't you just do a word search.

15 MR. GALARDI: Yeah, we will. Again, it's gone
16 through many iterations, so I'm not surprised that we have
17 some stray definitions. And, Your Honor, I do want to make
18 clear -- and Mr. Tabak reminds me -- the only releases is a
19 release to the extent under law that we actually have these
20 indemnifications. I just -- again, Your Honor, with respect
21 to the few changes -- and I do think these are
22 clarifications -- what I'd ask you to first look to is the
23 disclosure statement. Though there are a couple of omits,
24 one thing -- and, again, as you read things and then prepare
25 for the disclosure statement hearing, I thought there was

1 not a clear statement. So on Page 11 of the disclosure
2 statement --

3 THE COURT: Is this the one you just gave me?

4 MR. GALARDI: This is the one I just handed to
5 you. You will see that these changes are extremely light,
6 but just so that there could be no issue, I thought it was
7 there, but you read everything and you don't see. Paragraph
8 6, we wanted to note that the value of the Debtor's asset,
9 retained assets. I've seen cases that say you have to tell
10 them where it is. We're only five months into the case, we
11 don't have -- know the current value of the retained assets,
12 including the gawker.com assets. We are going to file a
13 plan supplement that looks at the litigations, but I did
14 want to know for readers that we didn't know that. But,
15 again, we may have a solvent case. So one of the issues
16 will be, can you even bring preferences if there were,
17 obviously, if it's a solvent case. So that's part of what's
18 going to happen over the next six weeks. So I did want Your
19 Honor to be aware of that.

20 Page 48 of that disclosure statement is the other
21 second big change, but this is really a conforming change of
22 definitions. We had a definition of employee parties; we
23 had changed last night or yesterday the employees and
24 independent contractor definitions. So that just makes
25 clear that the injunction obviously will take Your Honor's

1 comments into effect and make those changes.

2 Finally, Your Honor, on the plan, and I think this
3 is, again, we think it was covered. If Your Honor would
4 turn to Page 4 of the plan document that I provided to Your
5 Honor, we made one other clarification, and I've realized
6 the result of a question yesterday. You'll see the Debtor
7 indemnification obligation said meant -- it originally means
8 indemnification, contribution, reimbursement, or such other
9 -- or other such obligations.

10 We always thought it covered advance of defense
11 costs of duty to defend, we wanted to make that clear and we
12 still left or other such clarifications; otherwise, those --
13 I think we actually captured all of the other substantive
14 changes to the disclosure statement and plan in what we
15 handed to Your Honor. And I apologize that it was late in
16 the day yesterday or midway through the day and it was late.
17 But, Your Honor, I think that was better to get you all of
18 them at once, as opposed to watching the sausage be made, so
19 to speak.

20 Your Honor, with respect to the general standard,
21 Your Honor is familiar that adequate information has to be
22 sufficient detailed. In light of the circumstances, there
23 is -- there are 18 factors that have been floated around by
24 the courts. I'll just go quickly through them with Your
25 Honor, and I'll point to the sections. We think we actually

1 satisfy all 18.

2 The circumstances that gave rise to the filing of
3 bankruptcy is in Section 5. The explanation of the
4 available assets and values is in Section 4. The
5 anticipated future of the Debtor is spread throughout these
6 sections -- 1, 2, 3. The sources of information are in the
7 preface. A disclaimer is in Section 11. The condition and
8 performance of the Debtors while in Chapter 11 is 6. The
9 information regarding claims and the estates is in 8 and
10 elsewhere. A liquidation analysis is in 10. There was a
11 description, and we filed yesterday a liquidation analysis.
12 And I'll spend a couple of minutes with Your Honor on that
13 liquidation analysis because I think it also helps clarify
14 some of Your Honor's questions.

15 The information and accounting methods used to
16 produce the financial information. We don't have
17 projections because we have liquidated, but we do have the
18 financial, and there are the books and records of the
19 company that is disclosed. Information regarding the future
20 management of the company; we have a plan administration who
21 is to be identified in the plan supplement. A summary of
22 the plan and reorganization and liquidation; as I mentioned,
23 we already went through that, and it's also the liquidation
24 is in the liquidation analysis. An estimate of all
25 administrative expenses, including attorneys' fees and

1 accountants; there's no specific numbers in there, other
2 than they are reflected in the allocation and they are also
3 reflected in the liquidation analysis.

4 Again, M is projections. We have some tables that
5 say what the recoveries are, so that's about the best we do,
6 but we're not a going concern. Information to the risks;
7 there is a risk section. The actual projected value that
8 can be obtained from avoidable transfers, I just mentioned
9 why I added in that paragraph today. We didn't have
10 anything that was crisp on that one. The existence and
11 likelihood of possible success of non-bankruptcy litigation.
12 We did go through our litigations and, as we've said many
13 times on the record, that we believe we will succeed on
14 those litigations and settle the ones -- settle the Bollea
15 litigation where there was a judgment.

16 The tax consequences of the plan. There is a tax
17 disclosure and, as I've mentioned a couple of times, Your
18 Honor, one of the major issues is to try to go effective
19 before year end because of the way that Hungarian count tax
20 works and the way that U.S. tax work, so we've got a lot of
21 work to do between now and the 13th, but that is a major
22 factor here, and there is disclosure with respect to that.

23 The relationship of the Debtor with its affiliates
24 is described in Section 4. And the collectability of any
25 accounts receivable. We really don't have accounts

1 receivable, they've been sold, but there is a description in
2 Section 7.

3 Your Honor, just to point out, I think it's
4 important for the liquidation analysis, and I actually had a
5 debate a little bit about this. We filed --

6 THE COURT: Where is the liquidation analysis?

7 MR. GALARDI: It was filed as a separate document,
8 Exhibit C. I'm not sure, it may be tabbed.

9 THE COURT: I didn't have it in the loose-leaf you
10 sent last weekend.

11 MR. GALARDI: May I hand the Court a copy? Let me
12 just see if I have it here.

13 THE COURT: Yes, please.

14 MR. GALARDI: I think it's helpful for a couple of
15 important points. It's Docket 405, Your Honor. The first
16 important point I want to point out, and I had many debates
17 with myself and others about this. There is a methodology,
18 Your Honor, and the second paragraph of the methodology I
19 think is very important for this particular Debtor and this
20 particular liquidation analysis.

21 My understanding under New York law is that if you
22 were to look at a liquidation under a Chapter 7, the Trustee
23 could come in and say, well, I'll take all of the
24 settlements or whatever you've done, and I'm supposed to do
25 a liquidation analysis getting the benefit of those

1 settlements. Whether or not they can do that is another
2 question.

3 So one of the important points we wanted to point
4 out in this liquidation analysis, which I -- is that we made
5 four critical assumptions: First, that the Trustee proceeds
6 with the settlements with the creditors set forth in the
7 plan, even if there were in a plan; second is that the
8 Trustee proceeds with the allocation settlement set forth in
9 the plan, even if there were in a plan; the Trustee is able
10 to succeed on the prosecutions of the claims objections,
11 though is really new to the case and has no knowledge; and
12 the Trustee makes distributions before year end securing the
13 tax benefits.

14 So we've done what I think if someone wanted to
15 challenge the best interest test at confirmation, we've
16 given them what I think is the strongest case against us.
17 That was important for us. And then what you will see, Your
18 Honor -- and, again, we've used the assumptions that we used
19 favorable to us in the plan -- you will that this, if it
20 works out the way we believe, one we will -- and, again, not
21 for Your Honor's ruling, but I do want to point out -- we go
22 through the cash, we go through the allocation, you see the
23 distributions, and you see that we have set the claims at
24 the numbers that I had mentioned to Your Honor before. For
25 example, at Gawker Media, you'll see unsecured claims of \$36

1 million; you'll see that there was intercompany claims of
2 24, which also had GMGI; we've given a recovery. Those are
3 derived recoveries, and creditors would get somewhere
4 between 90 and 93 percent. Our view is they would get 100
5 percent under our plan.

6 The rest of it is almost irrelevant because you
7 can't get more than 100 percent. So if it flows through, it
8 goes to the equity; and if you look at the equity here,
9 equity has an upside and a downside compared to liquidation.
10 Again, with all the favorable, this would be better for the
11 equity because they can get potentially more under the
12 assumption. So that's how we did the analysis, and it flows
13 through. And, obviously, at confirmation, we will make a
14 more detailed presentation with respect to it and if any
15 objection is actually raised.

16 THE COURT: How much cash is going to be left in
17 these combined estates these settlements go through and pay
18 off the settlements?

19 MR. GALARDI: Well, take it collectively -- let me
20 do it this way.

21 THE COURT: Or if you want, how much cash in the
22 case and how much will the claims be, assuming the
23 settlements and (indiscernible) beyond liquidated claims to
24 be?

25 MR. GALARDI: I think the simplest way to answer

1 that question is the following: If we're right about
2 unsecured claims and you use up the entire reserve, but go
3 no higher than the reserve, right, that 3.75 that I've
4 referred to, which we still think is a high number, there
5 will be that could flow through the system and go all the
6 way up to GMGI somewhere around \$39-\$40 million.

7 THE COURT: But what's the total amount of debt in
8 the three cases?

9 MR. GALARDI: The only -- there's -- when you say
10 debt, there's no more secured debt, it's all been paid off.

11 THE COURT: But assuming that -- I asked you how
12 much money is in the case and how much money is the debt.
13 So assume nothing's been paid off, but, you know, have been
14 settled. If it's 100 cent case, it doesn't really matter if
15 you're paying now or later, I suppose.

16 MR. GALARDI: Correct. And the only issue about
17 whether it's a 100 cent case is when you have three or four
18 claims -- 20 million, 80 million, and a 100 million --
19 that's the whole dilemma we have.

20 THE COURT: What do you think the unsecured debt
21 is going to come in at.

22 MR. GALARDI: I think it's going to be under \$36
23 million, including the settlements we've set up.

24 THE COURT: Including the settlements?

25 MR. GALARDI: Correct.

1 THE COURT: And how much cash is in the case?

2 MR. GALARDI: Well, in the Gawker Media case, it's
3 --

4 THE COURT: What's the total?

5 MR. GALARDI: Well, there's 60 plus, I think. Let
6 me just look at where we are on the Gawker Hungary. I think
7 there's about 100, right; 70-80 for distribution.

8 THE COURT: Okay. And how much is Gawker Hungary
9 getting after it makes its contribution and is basically out
10 of the case?

11 MR. GALARDI: Let's start with what does it -- I'm
12 going to say on the down stroke. So day one and as a result
13 of the allocation, without that 16 that sweeps over -- let
14 me get to the waterfall, okay -- 34, right? Okay, so Your
15 Honor, we also did a waterfall analysis. So the easy way to
16 say it, and now this is -- I'll just put on for Your Honor.
17 After you split purchase price and gross sources, there's
18 about \$152 million in the estate, okay. Let's just start
19 with that. But then we subtracted out debt. So as we sit
20 here today with anticipated cash, we think there will be
21 available to fund a plan 55 million -- \$56 million over at
22 GM LLC, 35 million at Gawker Hungary, and basically \$8,000
23 at GMGI. So now let's pay the claimants.

24 THE COURT: And Gawker Hungary is contributing how
25 much to the case, to the Gawker Media case, which basically

1 has all the debt.

2 MR. GALARDI: To GMGI?

3 THE COURT: No, to -- most of the debt resides in
4 Gawker Media, right?

5 MR. GALARDI: Correct, let's say 100 percent of
6 the debt.

7 THE COURT: Okay. And isn't Gawker Hungary paying
8 something to Gawker Media?

9 MR. GALARDI: It's not really paying something;
10 it's not collecting on its intercompany debt.

11 THE COURT: I understand. Is that 16 million part
12 of the --

13 MR. GALARDI: 34? No.

14 THE COURT: Okay. So you don't count that as part
15 of the debt.

16 MR. GALARDI: Correct.

17 THE COURT: All right. How much are
18 unsubordinated unsecured debt is there in the case?

19 MR. GALARDI: Again, I come back to we believe the
20 unsecured debt in total is about \$36 million.

21 THE COURT: And that includes the subordinated
22 debt?

23 MR. GALARDI: I'm not sure what you're referring
24 to as subordinated.

25 THE COURT: Well, you're saying that certain

1 claims will not be paid until the unsecured creditors are
2 paid in full.

3 MR. GALARDI: That's 750 and another \$3-4 million.

4 THE COURT: Is that \$4 million in subordinated
5 debt?

6 MR. GALARDI: There's the subordinated piece of
7 the intercompany to Hungary, which I would say is roughly 4;
8 and then there's the 750 make-whole claim, which is 750.

9 THE COURT: It's almost \$5 million in un -- in
10 subordinated debt.

11 MR. GALARDI: Yes.

12 THE COURT: And that's included within the 36
13 million in total?

14 MR. GALARDI: No.

15 THE COURT: Okay. So there's 36 million in non-
16 subordinated unsecured debt.

17 MR. GALARDI: Correct.

18 THE COURT: And how much money is there to pay
19 that?

20 MR. GALARDI: About \$55 million.

21 THE COURT: All right, okay.

22 MR. GALARDI: I'm sorry, I was a little bit slow
23 on that one.

24 THE COURT: You've been moving pretty fast.

25 MR. GALARDI: And, Your Honor, there's funding --

1 and, again, there's details and we have a cash flow. And,
2 again, I'm thinking of confirmation, you know, we have
3 reserved various amounts under the plan for professionals
4 and costs and all of those sorts of things. But at the end
5 of the day, if we pay 36 -- now to answer your question --
6 if we pay the full 36, there would still be a little extra
7 money to go over to Gawker Hungary and go back up to GMGI
8 and there'll be about \$39 million by my quick math on that.

9 THE COURT: Okay, all right. Thanks.

10 MR. GALARDI: Okay. And, again, a lot of those
11 creditors have claims up at the parent too. So, Your Honor,
12 with respect to that, we think the disclosure statement
13 contains adequate information, and we'd ask Your Honor to
14 approve it. I'd like to turn just very briefly --

15 THE COURT: Before we get to the Order, let me ask
16 if anybody wants to be heard on the disclosure statement.
17 Hearing no response, go ahead.

18 MR. GALARDI: Your Honor, with respect to the
19 proposed disclosure statement Order, we've had very few
20 changes to the Order that -- and we did file a notice of
21 that. I don't know if Your Honor has questions about that
22 or the changes to anything in the solicitation procedures.
23 I think they're -- I would say they're standard. I will
24 note we did one thing.

25 THE COURT: (indiscernible).

1 MR. GALARDI: I will note that we did one thing,
2 and I think this also goes to expediting a resolution.
3 We've objected to claims, large litigation claims. Now,
4 whether they accept it or not, we added a convenience class
5 to this plan. Whether they take \$25,000, I don't know.

6 THE COURT: One of the things I wanted to mention
7 is it wasn't clear to me that -- or it may not be clear to
8 them -- that by opting into this convenience class, that
9 resolves the objection and waives any further claims.

10 MR. GALARDI: Okay. We will make that clear, yes.

11 THE COURT: That should be made clear.

12 MR. GALARDI: Okay, and that's clearly our
13 intention. And it's also our intention that you don't get a
14 75 bite, one of each.

15 THE COURT: I assumed that. Well, just say that
16 by opting into the convenience class resolves the objection
17 and the claim is allowed in that amount basically.

18 MR. GALARDI: Correct.

19 THE COURT: Is what you're saying.

20 MR. GALARDI: That is right.

21 THE COURT: That is the settlement of the claim.

22 MR. GALARDI: Correct. And Your Honor, and we are
23 actually giving to a -- there's a non-voting status since
24 they have a pending objection since we filed those. There
25 will be a box that they can still make that election. So

1 even though we've taken the position it's zero, it's well
2 worth our time to pay 25,000 to make it go away. We also
3 hope -- and this is, again, what we've said to the committee
4 -- we'd love to engage in settlement negotiations because,
5 again, our main goal is to make sure we get plans, get the
6 claims done, and get effective before year end and not have
7 fights over reserves at confirmation.

8 I don't know if Your Honor had other questions
9 about --

10 THE COURT: Yeah, another point. When you're
11 talking about resolution events, I guess this is the Order
12 rather than the -- that was for solicitation procedures. So
13 I'm looking at the redline copy.

14 MR. GALARDI: Okay.

15 THE COURT: It talks a resolution of end, and it
16 talks about certain things that have to occur no later than
17 three days prior to the voting deadline. And one of the
18 things is -- well, there are several things, one of which
19 being the Court temporarily allows a claim under Rule
20 1318(a). Is it possible that deadline can run before you
21 even file an objection? I mean, you can object to a claim
22 after the voting deadline, can't you?

23 MR. GALARDI: Yes, but what we did in our
24 procedures, which we thought about exactly -- and, again,
25 people have done it for gerrymandering purposes. It's not

1 my style. What we particularly did was, we gave ourselves a
2 deadline that you had to file by October 31st the objection;
3 or else if we filed an objection after this date, it's our
4 obligation to go in and say, we don't think you should have
5 an allowed claim. So if we just filed a random objection,
6 they still get to vote that claim.

7 THE COURT: Next, on Page 8 of the redline, it's
8 the carryover of Paragraph 8, and subsection (g) says that
9 if you send in two ballots, we'll count the later ballot,
10 right?

11 MR. GALARDI: Yes.

12 THE COURT: What happens if the second ballot
13 changes the vote from an acceptance to a rejection or a
14 rejection to an acceptance?

15 MR. GALARDI: Is it a late -- did you say late
16 ballot?

17 THE COURT: A timely ballot.

18 MR. GALARDI: It changes the vote to the
19 acceptance or rejection.

20 THE COURT: Can't do that without a Court Order
21 under Rule 3018(a).

22 MR. GALARDI: That's true.

23 THE COURT: So you can count the ballot subject to
24 Rule 3018(a).

25 MR. GALARDI: Okay. And Your Honor, most times

1 that doesn't have an effect on voting, so it's usually not
2 an issue to deal with at confirmation, but we'll deal it
3 with then.

4 THE COURT: Next, it's not really going to affect
5 this kind of a case, but you have an aggregation in the next
6 paragraph. If I'm a creditor with 30 claims, you can count
7 me as one claim, right? What's the authority for that?

8 MR. GALARDI: Well, again, a lot depends on the
9 kinds of claims. You're right --

10 THE COURT: It's not going to happen in this case,
11 but I'm curious, what's the authority for that?

12 MR. GALARDI: I'm going to say --

13 THE COURT: So if somebody wants to go out and buy
14 up claims to block a confirmation.

15 MR. GALARDI: You're 100 percent correct, Your
16 Honor, and it should not be there.

17 THE COURT: Under Section 1126(c), we can't
18 (indiscernible).

19 MR. GALARDI: Correct.

20 THE COURT: With respect to -- this comes up a
21 couple of times. Starting with J, you essentially say that
22 the Debtors can waive any defects subject to contrary Court
23 Order. There are those out there who might think that the
24 Debtor would waive the defects for the acceptances, but not
25 the rejections. So you can't waive anything without a Court

1 Order.

2 MR. GALARDI: And so, Your Honor, what we'll do is
3 if we intend to waive it, we'll come in at confirmation and
4 ask Your Honor.

5 THE COURT: Well, what you're going to do is in
6 your -- and this may be eventually a rule change in the
7 national rules -- your certification should identify those
8 claims which you contend should not be counted or don't
9 comply.

10 MR. GALARDI: Right.

11 THE COURT: And then if it's -- you know, if it
12 matters, then we'll go through them. It may not matter.

13 MR. GALARDI: Sure.

14 THE COURT: Same comment with subsection (l),
15 where you can waive, I guess, more defects and
16 irregularities. Again, that's only with a Court Order.

17 MR. GALARDI: Okay.

18 THE COURT: With respect to (n), which gives you
19 the general right to do anything you want, it's only subject
20 to Court Order. And (r), where you say no ballot can be
21 withdrawn or modified after the voting deadline without the
22 prior written consent of the Debtors, that may also
23 implicate a change in voting. I'm not sure you can vote
24 after the deadline. But, you know, will have to comply with
25 Rule 3018(a) if they want to change their vote.

1 MR. GALARDI: Sure, understood.

2 THE COURT: Okay?

3 MR. GALARDI: Yes.

4 THE COURT: Anything else on the Order?

5 MR. GALARDI: Not unless Your Honor has other
6 things on the Order.

7 THE COURT: Does anyone else want to be heard on
8 the application?

9 MR. ZIPES: Your Honor, Greg Zipes with the U.S.
10 Trustee's Office. We have no objection, and the
11 presentation was very helpful to me. I just wanted to flag
12 one potential issue, which I don't think is going to happen
13 based on the presentation. But unsecured debt is project at
14 about \$36 million by the Debtor, and that would be to 100
15 percent plus interest, or unless the parties had agreed to
16 some other treatment, which they have. But I just wanted to
17 flag one issue. There's a payment to the three main
18 creditors here and they're getting in full for their claim.
19 There are other unsecured creditors as well.

20 THE COURT: Yeah, I know. Who represents the
21 interests of the unsecured creditors, the other unsecured
22 creditors?

23 MR. ZIPES: Well, I'm just -- I think it's
24 probably, based on what he's saying, it's not going to make
25 a difference in this case. But I just want to flag it as an

1 issue that I might raise at con --

2 THE COURT: Well, the committee still represents
3 the interests of the unsecured creditors, assuming they
4 haven't resigned, and the committee had separate counsel.

5 MR. RUSSELL: Your Honor, William Russell, Simpson
6 Thacher & Bartlett LLP, on behalf of the committee. I was
7 going to make exactly that point, Your Honor. Despite the
8 fact that the three members of the committee have settled
9 their individual claims against the estate, they're
10 cognizant of their obligations as members of the committee.
11 The committee still functions, and we're out there to
12 safeguard the interests of the unsecured creditors generally
13 and will continue to do so.

14 MR. ZIPES: Your Honor, may I just interject.

15 THE COURT: The problem may be, Mr. Zipes,
16 particularly with these personal injury claims, we may not
17 know for a very long time what those claims come in at.

18 MR. GALARDI: And I would just add -- I mean,
19 again, back and forth between committee counsel, a lot of
20 the reserve has been part of the back and forth there after
21 we had settled those claims, and they were not parties to
22 the individuals, so I would add that.

23 One thing I do want to correct about what Mr.
24 Zipes says -- and, again, another debate, and I don't think
25 it's become a confirmation issue. We are paying a

1 settlement amount; that does not mean we are paying claims
2 in full. And I think he came up and said it's claims in
3 full. These claims are still impaired.

4 THE COURT: Well, they're not impaired if you're
5 settling them.

6 MR. GALARDI: Your Honor, we may have --

7 THE COURT: (indiscernible) a case that says that
8 if you pay in accordance with the settlement that it's not
9 an impaired claim.

10 MR. GALARDI: Okay.

11 THE COURT: I think the argue -- what Mr. Zipes
12 was saying is you're paying these guys the full amount that
13 you've agreed that you owe them.

14 MR. GALARDI: Two of them.

15 THE COURT: If down the road another personal
16 injury claim comes in at a high number, you may not be able
17 to pay that claim 100 percent.

18 MR. GALARDI: Well, and again, Your Honor, you're
19 right, although we've been very rigorous about the bar date
20 and the administration claims bar date.

21 THE COURT: No, I understand it's the nature of
22 the claims that you may not know for a long time what a lot
23 of these tort claims come in at, if they come in at
24 anything.

25 MR. GALARDI: Correct, Your Honor. And, again,

1 why we were stringent about bar dates, administrative bar
2 dates, is exactly for that purpose. And our current bar
3 date runs out straight through where we closed operations,
4 and now we're covered even by administrative bar dates for a
5 date three weeks after we stop publishing.

6 THE COURT: And with respect to Mr. Bollea, he
7 does have \$140 million judgment. Might it be reversed?
8 Yes. Might it be reduced? Yes. But there's a danger it
9 won't be. And under the circumstances, a \$31 million
10 payment, it makes it very possible, if not probable, that
11 all the creditors will be paid in full sounds to me like
12 it's a settlement.

13 MR. GALARDI: And on that, Your Honor, I think Mr.
14 Denton said in his thing, this is a hard piece. You know,
15 some people will say we paid Mr. Bollea too much. Mr.
16 Bollea, I know has said to me, we're paying him too little.
17 So it is part of the allocation, which helps with all these
18 matters.

19 THE COURT: It's a good sign that nobody's happy,
20 right?

21 MR. GALARDI: And I'm the least favorite person in
22 the room on both sides, Your Honor. Your Honor, with
23 respect to that --

24 THE COURT: You say it proudly.

25 MR. GALARDI: With respect to the disclosure

1 statement, Your Honor, we'd ask you to approve it. We have
2 a voting deadline and we'll distribute it. What I would
3 anticipate doing -- and, again, I think you raised many
4 points that would be confirmation points. I don't know if
5 you need to see those changes to the disclosure statement
6 before we do it, or whether we will draft it and just get it
7 out and ask Your Honor to approve the disclosure statement.
8 I leave it to you. I think we have a mailing deadline of
9 November 7th, we will do it. Obviously, it's our risk if we
10 don't meet Your Honor's standard come confirmation.

11 THE COURT: All right. Is there anyone else who
12 wants to be heard? Subject to the changes I suggested,
13 which are really confirmation issues, I guess, and not
14 disclosure issues, I'm satisfied that the disclosure
15 statement contains adequate information and will permit a
16 hypothetical investor or creditor to make a decision whether
17 to accept or reject the plan, so I'll approve it.

18 The Order requires the changes that I've
19 indicated. So what I will ask you to do is send me a
20 redline copy of the Order, a clean copy of the Order. And
21 the clean copy of the Order should, as an attachment, have
22 the disclosure statement and exhibits that you handed up to
23 me today, so everybody knows what disclosure statement is
24 being approved.

25 MR. GALARDI: And, Your Honor, two things with

1 respect to that. One is obviously, your comments on the
2 solicitation procedures will be in this one and have to be
3 approved, so we have to make those. What I was referring to
4 is the disclosure statement.

5 THE COURT: No, I said they are confirmation --
6 primarily confirmation issues, like the scope of the
7 release. I'm confident you'll make the corrections;
8 otherwise, this may be an exercise in futility.

9 MR. GALARDI: Exactly. And, Your Honor, what I
10 would -- unless you want a separate those pages, what I
11 think we will do is --

12 THE COURT: I don't have to see any further
13 changes to the disclosure statement, but I do want a fully
14 blackline copy of the solicitation procedures and also the
15 Order to clarify that the election to opt into to the
16 convenience class resolves the objection and that's it.

17 MR. GALARDI: Thank you, Your Honor. Then we'll
18 filed a conformed disclosure statement, send it out as is
19 practice. Thank you very much for your time, Your Honor.

20 THE COURT: Well, don't send anything out until I
21 sign the Order.

22 MR. GALARDI: Yes, obviously. I (indiscernible)
23 jump the gun that much. I appreciate it. Thank you, Your
24 Honor.

25 THE COURT: Thank you very much.

1 MR. RUSSELL: Your Honor?

2 THE COURT: Yes, sir.

3 MR. RUSSELL: Before we adjourn, I had one issue
4 I'd like to clarify with the Court.

5 THE COURT: For what?

6 MR. RUSSELL: When Your Honor entered the Order
7 approving the retention of the Deloitte Financial Advisory
8 Services and its financial advisors to the committee on
9 October 13th, Your Honor struck one of the tasks that
10 Deloitte would be performing that related to activities
11 relating to the 363 sale. Rather than assume that Your
12 Honor did that because by the time the Order was signed, the
13 363 sale was over or assume that it was subsumed in one of
14 the catch-alls (indiscernible).

15 THE COURT: Wasn't there an -- I left in there the
16 allocation issue, didn't I?

17 MR. RUSSELL: Well, yes, certainly, you left to
18 the allocation and advising the committee in connection with
19 negotiations and due diligence.

20 THE COURT: Yeah.

21 MR. RUSSELL: So, okay, we just want to make sure
22 that Your Honor wasn't taking the position that work
23 Deloitte had done in connection with the sale was not
24 excellent.

25 THE COURT: What did it do in connection with the

1 sale?

2 MR. RUSSELL: Well, they did a lot, Your Honor.
3 They performed financial analysis of the various bids and
4 letters of intent we received, rather the Debtors received
5 from potential buyers.

6 THE COURT: Does the U.S. Trustee have any
7 objection to a supplemental order expanding the retention --
8 I think it was a nunc pro tunc retention.

9 MR. RUSSELL: It was, Your Honor.

10 THE COURT: That include work done in connection
11 with the sale.

12 MR. ZIPES: We discussed this; we have no
13 objections.

14 THE COURT: All right, so why don't you submit a
15 proposed Order which expands the retention to that extent.

16 MR. ZIPES: Thank you very much, Your Honor.

17 MR. GALARDI: Your Honor, may I just -- one other
18 issue, and I'm trying to avoid professional fees. There's
19 an outstanding objection by the committee to the Akin Gump
20 application.

21 THE COURT: What are they being retained for?

22 MR. GALARDI: They were retained to give Mr.
23 Tillman independent director advice regarding the analysis
24 of the claims with respect to Mr. Bollea when we were --
25 before we were having all these settlement discussions. I'm

1 hopeful that we will resolve that. If we can resolve it
2 with the committee -- there's a hearing next week, I think
3 it is, the 15th. If we can resolve it, I'd like to put it
4 in on certificate of no objection, but I don't know if Your
5 Honor would want to have that on a separate hearing, have
6 that hearing in any event.

7 THE COURT: What's the objection?

8 MR. RUSSELL: Your Honor, we didn't really see the
9 need to retain Akin Gump here. To the extent there are
10 conflicts, we don't think they're resolved by Mr. Tillman
11 having separate counsel and weren't sure that Akin Gump was
12 doing anything that could not be done as well by Ropes &
13 Gray. We are negotiating perhaps some sort of cap or some
14 sort of more comfort on the amount of fees. Assuming we can
15 come to agreement on that, we will withdraw our objection.

16 THE COURT: All right. Well, you can proceed on
17 notice of presentment and a certificate of no objection, but
18 I'll look in the Order. And if I have any questions, as I
19 did with Deloitte, I'll have a hearing.

20 MR. GALARDI: That's fine, Your Honor, we'll
21 proceed that way, and then we can keep Your Honor apprised
22 if it need adjournment or resolution for the next hearing.

23 THE COURT: All right.

24 MR. GALARDI: Thank you again for your time.

25 THE COURT: Anything else?

1 MR. RUSSELL: Thank you, Your Honor.

2 THE COURT: All right, thank you very much.

3 (Whereupon these proceedings were concluded at
4 11:54 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya Ledanski
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Date: November 4, 2016